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Thomas Goldney, Gabriel Goldney, Elizabeth Goldney, Ann Goldney, Spinsters, Martha Champion, Widow, Richard Ford, John Ball, John Woods, and Abraham Darby, Proprietors, Partners, and Sharers of several Iron Furnaces, and Works for making Iron, at Colebrook Dale, in the County of Salop. } *Appellants.*

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*Willam Hayward, Esq;**Respondent.*

The Respondent's CASE.

TH A T the Respondent's Father having, by Bargain and Sale of the 9th of *March* 1725, granted and conveyed to the Respondent all that his Colliery or Coal-works under his Lands, in *Coalmere*; with the usual Liberties for getting, raising, and carrying away the same. TO HOLD to the Respondent, his Heirs and Assigns.

Lease, dated 4th May, 1726. THE RESPONDENT, upon Application made to him by *Richard Ford*, (now deceased) who was one of the Company of Iron Manufacturers in *Colebrook Dale*, in the County of *Salop*, by Lease, dated the 4th of *May*, 1726; demised to the said *Richard Ford*, all Mines, Pits, and Veins of Coals then opened, and known, or that might be, during the Term therein mentioned; found out by Digging, Sinking, or otherwise, in and upon all those several Pieces of Wood Grounds and other Lands, situate in *Colemere*, in the Parish of *Little Wenlock*; belonging to the said *William Hayward* the Elder, containing, by Estimation, 100 Acres, with the usual Liberties for digging, finding, raising, and carrying away the same. TO HOLD the same to the said *Richard Ford*, his Executors, Administrators, and Assigns, from the Date thereof, for the Term of fifteen Years, if there should be a sufficient Quantity of Coals to be gotten for that Time.

Habendum. Reddendum. YIELDING AND PAYING therefore yearly, and every Year, during the said Term, hereby Demised unto the said *William Hayward* the Younger his Heirs, and Assigns, the yearly Rent of fourscore Pounds of lawful Money of *Great Britain*, at, or upon the five and twentieth Day of *June*, the nine and twentieth Day of *September*, the five and twentieth

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tieth Day of *December*, and the five and twentieth Day of *March*, yearly, and every Year, by equal Portions ; the first Payment to be made on the nine and twentieth Day of *September* next ensuing the Date hereof, which said yearly Rent, or Sum of Fourscore Pounds is, by Computation, after the Rate of one Shilling *per* Stack of Coals Royalty, for Sixteen Hundred Stack, the said *Richard Ford*, and his Assigns, to be allowed thirty-five Hundred Weight of Coals to the Stack, with a common Clause of Re-entry to the Respondent and his Heirs, the Non-payment of the said Rent, or any Part thereof, for twenty-one Days after any of the Days of Payment, and not paid on Demand.

Covenant for
Payment of
the Rent.

With the several Covenants following therein contained, from the said *Richard Ford*, his Executors, Administrators, and Assigns, to the said *William Hayward* the Younger, his Heirs and Assigns ; that he the said *Richard Ford*, his Executors, Administrators, and Assigns, should and would, well and truly pay, or cause to be paid unto the said *William Hayward* the Younger, his Heirs and Assigns, the said Rent or Sum of Fourscore Pounds, being one Shilling *per* Stack of Coals, thirty-five Hundred Weight of Coals to the Stack, above reserved at the Days and Times, and in the form above expressed, clear of all Manner of Deductions and Payments whatsoever. He, the said *William Hayward* the Younger, his Heirs and Assigns, yearly and every Year, during the Term thereby Demised, paying all Parliamentary and Parochial Taxes that were or might be levied upon the aforesaid Lands or Coals, during the Term aforesaid, if demanded.

Covenant on
the Lessee's
Part.

AND ALSO, that he the said *Richard Ford*, would at his own proper Costs and Charges, find all Materials for working the said Mines, and carrying on of the same, without any Charge to him the said *William Hayward* the Younger, his Heirs or Assigns : And that he the said *Richard Ford*, his Executors, Administrators, and Assigns, or his or their Workmen, Servants, and Labourers, should and would fill up every Pit or Pits that should be sunk in the said Lands as soon as convenient, on or before the Expiration of the said Term, or within one Month after ; and that they and every of them, would carry on the said Coal-work fairly, and take the Clod Coals before them, according to good Colliery, nor sink more Pits in the said Lands than should be necessary, nor leave any Clod Coals ungotten that could be reasonably come at in any Pit, but should clear the same :

AND ALSO, that it should and might be lawful for the said *William Hayward* the Younger, his Heirs and Assigns, and his and their Workmen and Servants, by his or their Appointment, at any Time during the said Term, to enter into and View the said Colliery thereby Demised, or any Part thereof, to see if the same was carried on fairly ; and if in carrying on the said Works, or getting the Coals there, should be found any unfair Workmanship, then the two Parties concerned should each chuse a sufficient Workman, who should finally determine what should be amended at the proper Costs of him the said *Richard* With

Covenant on
the Lessor's
Part.

Exception.

With the several Covenants following therein also contained, from the *Respondent*, his Heirs and Assigns, to the said *Richard Ford*, his Executors, Administrators, and Assigns; that he the said *Richard Ford*, his Executors, Administrators, and Assigns, Servants, Agents, and Workmen, or any of them, should and might enter upon any Part of said Lands, lying in *Colemere* (excepting Gardens and Meadows, belonging to the House there) and there to dig, delve for, and get Coals, and the same Coals so got to Land and Stack upon the said Premises, or any Part thereof, and to carry away the same at any Time or Times of the Year as to them should seem fit, without the Lett, Hindrance or Molestation of him the said *William Hayward* the Younger, his Heirs or Assigns, or any Person or Persons claiming by, from, or under him, them, or any of them; and that the said *Richard Ford* and his Assigns, might raise any Quantity of Coals upon the said Premises, not exceeding sixteen Hundred Stack, each Stack of Coal containing thirty-five Hundred Weight, as aforesaid; which Coals were to be employed in carrying on the Iron Works at the *Dale*: But if there should be occasion for a greater Quantity of Coals to be used there, that then, and in all such Cases, he the said *Richard Ford*, his Executors, Administrators, and Assigns, should and might have Liberty to raise any further Quantity for such Use, paying to the said *William Hayward* the Younger, his Heirs and Assigns, one Shilling for every such further Stack so raised, that should exceed the said sixteen hundred Stacks abovementioned.

AND it is thereby further agreed, that the said *Richard Ford*, his Executors and Assigns, should and might, over and above the said sixteen hundred Stack of Coals, raise any further Quantity and Number of Stacks of Coals, for the use of the said Iron-works, provided the said sixteen hundred Stacks should be deficient to supply the same; and also the further Quantity or Number of four hundred Stacks of Coals, over above, and besides what should yearly serve the said Iron-works, to be disposed of to sale or otherwise, as he the said *Richard Ford*, his Executors, Administrators, or Assigns should think fit, paying to the said *William Hayward* the younger, his Heirs or Assigns one Shilling *per* Stack for every Stack so raised; but that he should not in any one Year dispose of by Sale or otherwise, any Number of Stacks exceeding four hundred, unless the Furnaces should happen to blow out, and the Iron-works stood: And that then, and in all such Cases, he the said *Richard Ford*, his Executors and Assigns, or any of them might, and had thereby full Liberty to dispose of by Sale or otherwise, any Part of the said sixteen hundred Stacks, or greater Quantity, if gotten, paying one Shilling *per* Stack for every Stack above the sixteen hundred Stacks as aforesaid.

WITH THE FURTHER Covenants therein, from the said *Richard Ford*, Executors, Administrators, and Assigns to the *Respondent*, his Heirs and Assigns to pay unto the said *William Hayward* the younger, his Heirs and Assigns, one Shilling for every Stack that should be raised, exceeding the sixteen hundred Stacks abovementioned, whether the same was for the use of the said Iron-works or Part of the four hundred

dred Stack thereby agreed to be at the free Disposal of the said *Richard Ford* and his Assigns.

AND FURTHER, that he the said *Richard Ford*, his Executors, Administrators and Assigns, or his or their Workmen, Colliers, Labourers, or Servants, would not in any one Year dispose of by Sale any Quantity of Coal above the said four hundred Stacks, except the Iron-works stood as aforesaid, or the Coal not fit for the Use of the said Works, or would in any one Year raise a larger Quantity then necessary for carrying on the said Iron-works, except the four hundred Stacks beforementioned, without the Leave and Consent of the said *William Hayward* the younger, first had in Writing.

AND FURTHER, to keep a Book for Entering of Coals by the Number of Stacks, and to pay one Shilling *per* Stack for every Stack got above the sixteen hundred Stacks yearly.

BY VIRTUE OF THE SAID LEASE, the said *Richard Ford* entered and held the said Demised Premises for the whole Term and one Year and near eight Months longer; and during that Time got great Quantities of Coals, for the Use of the said Company; and likewise, became indebted to the Respondent in large Sums for Timber, Underwood, Coal-Pit Wood, Ash, Cordwood, Ironstone, the Rent of a Farm and a Pool and other Matters; but during the whole Time never drew up or settled the Coal Account with the Respondent, or ever signified to him the Quantities of Coals got in each Month or Year; neither was the Respondent able to get any Coal Account delivered to him, 'till after the Decease of the said *Richard Ford*, when the Dale Company pretended that the Respondent was intitled only to one Shilling *per* Stack for such Coals as they had got, and not to any neat Rent of eighty Pounds, or any other neat yearly Rent, and insisted on the Respondents allowing them large Sums for the raising and getting of the said Coals, and refused to Account with the said Respondent for his other Demands, and from Time to Time concealed the true Price and Value of the Underwood Coal-Pit, Wood, and Cordwood, which they had of the Respondents, and charged the same in their Accounts at a considerable undervalue. WHEREUPON,

Original Bill filed Michaelmas Term, 1749. In Michaelmas Term 1749, the Respondent exhibited his Bill in the Court of Exchequer against the Appellants *Thomas Goldney*, *Abraham Darby*, and *Richard Ford*, three of the Partners or Sharers of the Coalbrook Dale Iron Company, and others to produce the said Lease, and to Account with the Respondent, and pay him what should appear to be Due on the Balance thereof, and to deliver up the said Lease to be cancelled.

Answers fil'd 24th of May 1751. THE APPELLANTS *Thomas Goldney*, *Abraham Darby*, and *Richard Ford* put in their Answers, and thereby admitted that they were three of the Sharers and Proprietors of the said Iron-works, and were ready to Account with, and pay the Respondent any Sum that should appear

appear to be Due to him for Coal, Wood, Timber, and Ironstone sold or delivered to the said *Richard Ford* deceased, or to the said Works for the Use of the said Company, or Due to the said Respondent on any other Account from the said Company; and admitted that they got great Quantities of Coal and Ironstone, and had of the said Respondent great Quantities of Timber and Wood for the Use of the said Company, *AND that they carried on the said Works one Year and eight Months, after the Expiration of the said Lease, during which Time they got considerable Quantities of Coals, but pretended that an Account was stated between the Respondent and the said Richard Ford to the 25th of March 1732, and that a Balance of twenty-four Pounds twelve Shillings and Seven-pence Halfpenny, was Due to the Appellants thereon; and that the said Appellants had paid and advanced to the Respondent several Sums of Money on Account of the said several Articles, and that they were at a considerable Expence in opening Pits, winding Water, sinking for and getting the said Coals in the Lands, comprised in the said Lease, and also in certain Lands called Cocks's Lands, and in other Lands called Guest's Lands, for which they insist to have an Allowance, and that the same with the Sums paid to the Respondent will turn the Balance in Favour of the Appellants.*

The Respondent's Commission to Examine, Nov. 1753.

Appellants Commission, Jan. 1754.

THE RESPONDENT having replied to the said Answers, and Issue being joined, a Commission issued in *Michaelmas Term 1753*, upon which the Respondent examined several Witnesses, but the Appellants did not think fit to attend such Commission; but in order to delay the Hearing of the said Cause, applied for a new Commission, which was granted, and afterwards executed in the Month of *January 1754*, when the Appellants examined a great Number of Witnesses, and sat upon the said Commission above a Fortnight, when the Respondent attended, *but did not examine one Witness on the said Commission.*

Cross-Bill, Hilary Term, 1754. Prayer thereof.

THE APPELLANTS filed their Cross-Bill, setting forth much to the same Purpose as in the Answer to the original Bill, and thereby PRAYED, that the Respondent might set forth and leave with his Clerk in Court all Letters, Papers, and Accounts he at any Time received from the said *Richard Ford* deceased, relating to the said Coal-mines or Company, and that the Appellants might Inspect and take Copies thereof; and that the Respondent might Account with the Appellants, and pay them the Sums of twenty-four Pounds twelve Shillings and Seven-pence Halfpenny, the supposed Balance of an Account pretended to have been stated in the Year 1732; and also one hundred and seventeen Pounds seventeen Shillings and Three-pence, the Expences which the Appellants alledged they were at in opening Mines in *Cocks's Lands* in the Year 1727; and one hundred and twenty Pounds pretended to have been advanced by the said *Richard Ford* deceased, to the Respondent in the Year 1728, with Interest for the same, which Sums were charged to have been omitted in the said Account, so pretended to have been settled, OR that the Appellants might

might have an Allowance for the same in taking the said Accounts;
TO WHICH BILL the said Respondent put in his Answer, and the
 Cross-Bill amended. said Bill was afterwards amended by several Orders, and the Respondent
 put in two several Answers thereto, to which the Appellant replied,
 and Issue was joined, **BUT NO WITNESS EXAMINED ON**
EITHER SIDE: But upon the Death of *Edmund Darby*, one of the
 Bill of Revivor. Complainants in the Cross-Bill; *Abraham Darby* took out Letters of
 Administration to him, and filed his Bill to Revive the said Suit,
 which was accordingly Revived.

Easter Term, 1757, Causes heard. **BOTH CAUSES** came on to be heard, and after taking up five
 Days in hearing, the Court on the sixteenth Day of *May 1757*, did una-
 nimously **DECREE**, THAT the Defendants in the Original Bill should
 Decree. Account with the Plaintiff *Hayward* for the yearly Rent of eighty
 Pounds, during the Continuance of the said Lease for the Coal-Mines
 in *Colemere*, and *Guest's* Lands, and for all the Coals got by them after
 the Expiration of the said Lease in those Lands, after the Rate of one
 Shilling a Stack, and for all Coals got by them in *Cocks's* Land or
 Ground at the said Rate of one Shilling a Stack, and for the Rent of
 the Pond, and also for the Rent of the Farm, in the Pleadings men-
 tioned sixteen Pound *per* Year, and for the Royalty of Ironstone, and
 for Timber, Underwood, Coal-Pit Wood, Ash, and Ironstone, in the
 Bill mentioned, supplied by the said Plaintiff, to the said Defendant's
 making to all Parties all just Allowances with usual Directions: That
 the Original Bill, as to the five Pounds a Year, payable to the Plain-
 tiff's Father, should be *dismissed* with Costs, and the Consideration of
 Costs in the said Original Cause were reserved till after the Account
 should be taken, and the *Cross Bill* was ordered to be *dismissed* with
 Costs, to be taxed.

Appeal. **FROM THIS DECREE** the Appellants **APPEALED** to your
 Lordships, complaining of many Parts of the said Decree; but being
 sensible that such Complaint was without Foundation, they have since
 amended their Appeal, and the same as it now stands is only upon
 these Grounds.

1st, THAT the said Decree hath not directed an Inquiry during
 what Part of the Time the Appellants were in the Possession of
 the said Colliery, the same produced sixteen hundred Stacks of
 Coals *per Annum*, and that during such Time only the Appellant
 should be charged with the said Rent of eighty Pounds *per Annum*,
 and that for such Part of the Time as the same did not produce
 at the Rate of sixteen hundred Stacks of Coals *per Annum*, the Ap-
 pellants should be charged only at the Rate of one Shilling *per*
 Stack for the Coals so got.

2dly, FOR THAT no Directions are given that in taking the Ac-
 count the Appellants should be allowed what they necessarily laid
 out and expended in winding and pumping of Water, and sinking
 and Sougling, in order to enable them to work the said Collieries.

3dly,

gly, BECAUSE the Court have *dismissed* the Appellant's Cross Bill, with Costs.

BUT THE RESPONDENT; hopes that the said Decree in the Particulars complained of, is Right, and that the same shall be AFFIRMED, with Costs, for the following, amongst other

R E A S O N S:

- I. BECAUSE the Inquiry, contended for by the Appellants, would have been wholly useless, it being immaterial whether the Coal Works produced one thousand six hundred Stacks, or any less Quantity in any one Year of the Term. THE Appellants by the true Intent and Terms of the Lease, and by the express Covenant of *Ford*, being at all Events to pay a Rent of eighty Pounds a Year so long as they should hold the Collieries under the Lease; and this was no Inconvenience to the Lessee, *because*, if the Work could not produce sixteen hundred Stacks a Year, the Lease itself determined,
- II. THAT THE RESPONDENT, by the express Provision of the Lease, was to be at no Expence whatever; but have his Rent and Royalty paid him, clear of all Deductions (Parliamentary and Parochial Taxes only excepted).
- III. BECAUSE the Cross Bill was totally unnecessary and vexatious, calculated only to delay the Respondent, and to put him to great Expence; *for*, as to every Matter in Dispute between the Parties, the Court could do, and has done, compleat Justice in the Original Cause.

WHEREFORE, and for divers other Reasons to be offered at the Hearing, the Respondent humbly hopes the said unanimous Decree of his Majesty's Court of Exchequer, shall be AFFIRMED, with Costs.

Geo. Perrott.
Gryff. Price.

Die Martis 12^o Decembris 1758.

Ordered & Adjudg'd by the Lords Spiritual and Temporal in Parliam^t. assembled, That the said Appeal be and is hereby — Dismiss'd this House, and that the said Decree therein complain'd of be and the same is hereby affirmed.

Goldney, and Others, Pro-
prietors, Partners, and Shar-
ers of several Iron-Furna-
ces and Works for making
Iron at Colebrook Dale, in
the County of Salop. } Appellants.

A N D

William Hayward, Esq;—Respondent.

The Respondent's Case.

To be heard at the Bar of the House of
LORDS, on Friday—the 6th Day
of Dec^r—1759.